United Nations

Report of the International Court of Justice

1 August 1992–31 July 1993

General Assembly

Official Records • Forty-eighth Session
Supplement No. 4 (A/48/4)

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I. COMPOSITION OF THE COURT

1. The present composition of the Court is as follows:
President: Sir Robert Yewdall Jennings; Vice-President: Shigeru Oda;
Judges: Roberto Ago, Stephen M. Schwebel, Mohammed Bedjaoui, Ni Zhengyu, Jens Evensen, Nikolaï K. Tarassov, Gilbert Guillaume, Mohamed Shahabuddeen, Andrés Aguilar Mawdsley, Christopher G. Weeramantry, Raymond Ranjeva, Bola A. Ajibola and Géza Herczegh.

2. The Court records with deep sorrow the death in office, on 14 January 1993, of Judge and former President Manfred Lachs.

3. On 10 May 1993, the General Assembly and the Security Council, to fill the vacancy left by the death of Judge Lachs, elected Mr. Géza Herczegh as a Member of the Court for a term ending 5 February 1994. At a public sitting of the Court on 14 June 1993, Judge Herczegh made the solemn declaration provided for in Article 20 of the Statute.

4. The Registrar of the Court is Mr. Eduardo Valencia-Ospina. The Deputy-Registrar is Mr. Bernard Noble.

5. In accordance with Article 29 of the Statute, the Court forms annually a Chamber of Summary Procedure. This Chamber is composed as follows:

Members

President, Sir Robert Jennings

Vice-President, S. Oda

Judges, S. M. Schwebel, Ni Zhengyu and J. Evensen

Substitute Members

Judges N. Tarassov and A. Aguilar Mawdsley

6. The Statute of the Court also provides, in Article 26, paragraph 1, as follows:

> "The Court may from time to time form one or more chambers, composed of three or more judges as the Court may determine, for dealing with particular categories of cases; for example, labour cases and cases relating to transit and communications."

In the past the Court has considered the question of the possible formation of a chamber to deal with environmental matters. On those occasions it took the view that it was not yet necessary to set up a standing special chamber, emphasizing that it was able to respond rapidly to requests for the constitution of a so-called "ad hoc" chamber (pursuant to Article 26, paragraph 2, of the Statute) which could also deal with any environmental case.

In view of the developments in the field of environmental law and protection which have taken place in the last few years, and considering that it should be prepared to the fullest possible extent to deal with any environmental case falling within its jurisdiction, the Court has now deemed it appropriate to establish a seven-member Chamber for Environmental Matters composed as follows: Judges Schwebel, Bedjaoui, Evensen, Shahabuddeen, Weeramantry, Ranjeva and Herczegh.

The Members of the Chamber, who have been elected by secret ballot, will serve for an initial period of six months and will enter upon their duties on 6 August 1993.

7. The composition of the Chamber formed by the Court on 8 May 1987 for the purpose of dealing with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) was as follows: Judges José Sette-Camara (President of the Chamber), Sir Robert Jennings, President of the Court, and Shigeru Oda, Vice-President of the Court; Judges ad hoc Nicolas Valticos and Santiago Torres Bernárdez.

8. In the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway), Denmark has chosen Mr. Paul Henning Fischer to sit as judge ad hoc.

9. In the case concerning the Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America), the Islamic Republic of Iran has chosen Mr. Mohsen Aghahosseini to sit as judge ad hoc.

10. In the case concerning the Territorial Dispute (Libyan Arab Jamahiriya/Chad), Chad has chosen Mr. Georges M. Abi-Saab and Libya Mr. José Sette-Camara to sit as judges ad hoc.

11. In the case concerning East Timor (Portugal v. Australia), Portugal has chosen Mr. António de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc.

12. In the case concerning Passage through the Great Belt (Finland v. Denmark), Denmark has chosen Mr. Paul Henning Fischer and Finland Mr. Bengt Broms to sit as judges ad hoc.

13. In the case concerning Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain), Qatar has chosen Mr. José Maria Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc.

14. In the cases concerning Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America), the Libyan Arab Jamahiriya has chosen Mr. Ahmed Sadek El-Kosheri to sit as judge ad hoc.

15. In the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), Bosnia and Herzegovina has chosen Mr. Elihu Lauterpacht to sit as judge ad hoc.

II. JURISDICTION OF THE COURT

A. Jurisdiction of the Court in contentious cases

16. On 31 July 1993, the 183 States Members of the United Nations, together with Nauru and Switzerland, were parties to the Statute of the Court.

17. Fifty-seven States have now made declarations (a number of them with reservations) recognizing as compulsory the jurisdiction of the Court, as contemplated by Article 36, paragraphs 2 and 5, of the Statute. They are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Canada, Colombia, Costa Rica, Cyprus, Denmark, Dominican Republic, Egypt, El Salvador, Estonia, Finland, Gambia, Guinea-Bissau, Haiti, Honduras, Hungary, India, Japan, Kenya, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, the Philippines, Poland, Portugal, Senegal, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland, Uruguay and Zaire. The texts of the declarations filed by those States appear in chapter IV, section II, of the I.C.J. Yearbook 1992-1993. The declaration of Hungary was deposited with the Secretary-General of the United Nations during the 12 months under review, on 22 October 1992.

18. Since 1 August 1992, two treaties providing for the jurisdiction of the Court in contentious proceedings and registered with the Secretariat of the United Nations have been brought to the knowledge of the Court: the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation concluded at Rome on 10 March 1988 (art. 16, para. 1); and the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on Their Destruction, done at Paris on 13 January 1993 (art. XIV).

19. Lists of treaties and conventions which provide for the jurisdiction of the Court appear in chapter IV, section III, of the I.C.J. Yearbook 1992-1993. In addition, the jurisdiction of the Court extends to treaties or conventions in force providing for reference to the Permanent Court of International Justice (Statute, Art. 37).

B. Jurisdiction of the Court in advisory proceedings

20. In addition to the United Nations (General Assembly, Security Council, Economic and Social Council, Trusteeship Council, Interim Committee of the General Assembly, Committee on Applications for Review of Administrative Tribunal Judgements), the following organizations are at present authorized to request advisory opinions of the Court on legal questions:

International Labour Organisation
Food and Agriculture Organization of the United Nations
United Nations Educational, Scientific and Cultural Organization
International Civil Aviation Organization
World Health Organization
World Bank
International Finance Corporation
International Development Association
International Monetary Fund
International Telecommunication Union
World Meteorological Organization
International Maritime Organization
World Intellectual Property Organization
International Fund for Agricultural Development

United Nations Industrial Development Organization
International Atomic Energy Agency

21. The international instruments which make provision for the advisory jurisdiction of the Court are listed in chapter IV, section I, of the I.C.J. Yearbook 1992-1993.

III. JUDICIAL WORK OF THE COURT

22. During the period under review the Court was seized of three new contentious cases: Oil Platforms (Islamic Republic of Iran v. United Stats of America), Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)), in which two requests for the indication of provisional measures were submitted, and Gabcíkovo-Nagymaros Project (Hungary/Slovakia). In the case concerning Passage through the Great Belt (Finland v. Denmark), the proceedings were discontinued at Finland's request.

23. The Court held 34 public sittings and a number of private meetings. It delivered a Judgment on the merits in the case concerning Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway) (I.C.J. Reports 1993, p. 38). It made an Order on the request by Bosnia and Herzegovina for the indication of provisional measures in the case concerning Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)) (I.C.J. Reports 1993, p. 3). It further made Orders fixing time-limits in the cases concerning Certain Phosphate Lands in Nauru (Nauru v. Australia) (I.C.J. Reports 1993) and Gabcíkovo-Nagymaros Project (Hungary/Slovakia).

24. The President of the Court made an Order in the case concerning Passage through the Great Belt (Finland v. Denmark) (I.C.J. Reports 1992, p. 348) removing that case from the list. He further made Orders fixing or extending time-limits in the cases concerning Oil Platforms (Islamic Republic of Iran v. United States of America) (I.C.J. Reports 1992, p. 763, I.C.J. Reports 1993, p. 35), Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro)) (I.C.J. Reports 1993, p. 29) and East Timor (Portugal v. Australia) (I.C.J. Reports 1993, p. 32).

25. The Chamber constituted to deal with the case concerning the Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening) held one public sitting and 20 private meetings. It delivered its Judgment on the merits in the case (I.C.J. Reports 1992, p. 351).

A. Contentious cases before the full Court

1. Maritime Delimitation in the Area between Greenland and Jan Mayen (Denmark v. Norway)

26. On 16 August 1988, the Government of Denmark filed in the Registry of the Court an Application instituting proceedings against Norway, citing as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

27. In its Application, Denmark explained that, despite negotiations conducted since 1980, it had not been possible to find an agreed solution to a dispute concerning the delimitation of Denmark's and Norway's fishing zones and continental shelf areas in the waters between the east coast of Greenland and the Norwegian island of Jan Mayen, where both Parties lay claim to an area of some 72,000 square kilometres.

28. It therefore requested the Court:

"to decide, in accordance with international law, where a single line of delimitation shall be drawn between Denmark's and Norway's fishing zones and continental shelf areas in the waters between Greenland and Jan Mayen".

29. Denmark chose Mr. Paul Henning Fischer to sit as judge ad hoc.

30. On 14 October 1988 (I.C.J. Reports 1988, p. 66), the Court, taking into account the views expressed by the parties, fixed 1 August 1989 as the time-limit for the Memorial of Denmark and 15 May 1990 for the Counter-Memorial of Norway. Both the Memorial and Counter-Memorial were filed within the prescribed time-limits.

31. Taking into account an agreement between the Parties that there should be a Reply and a Rejoinder, the President of the Court, by an Order of 21 June 1990 (I.C.J. Reports 1990, p. 89), fixed 1 February 1991 as the time-limit for the Rejoinder of Norway. The Reply and the Rejoinder were filed within the prescribed time-limits.

32. Oral proceedings were held from 11 to 27 January 1993. During 11 public sittings, the Court heard statements made on behalf of Denmark and of Norway. Questions were put to both Agents by Vice-President Oda.

33. On 14 June 1993, at a public sitting, the Court delivered its Judgment (I.C.J. Reports 1993, p. 38), the operative paragraph of which, together with paragraphs 91 and 92 referred to therein, reads as follows:

"[Para. 91] The delimitation line is to lie between the median line and the 200-mile line from the baselines of eastern Greenland. It will run from point A in the north, the point of intersection of those two lines, to a point on the 200-mile line drawn from the baselines claimed by Iceland, between points D (the intersection of the median line with the 200-mile line claimed by Iceland) and B (the intersection of Greenland's 200-mile line and the 200-mile line claimed by Iceland) on sketch-map No. 2. For the purposes of definition of the line, and with a view to making proper provision for equitable access to fishery resources, the area of overlapping claims will be divided into three zones, as follows. Greenland's 200-mile line (between points A and B on sketch-map No. 2) shows two marked changes of direction, indicated on the sketch-map as points I and J; similarly the median line shows two corresponding changes of direction, marked as points K and L. Straight lines drawn between point I and point K, and between point J and point L, thus divide the area of overlapping claims into three zones, to be referred to, successively from south to north, as zone 1, zone 2 and zone 3.

[Para. 92] The southernmost zone, zone 1, corresponds essentially to the principal fishing area. In the view of the Court, the two Parties should enjoy equitable access to the fishing resources of this zone. For this purpose a point, to be designated point M, is identified on the 200-mile line claimed by Iceland between points B and D, and equidistant from those points, and a line is drawn from point M so as to intersect the line between points J and L, at a point designated point N, so as to divide zone 1 into two parts of equal area. The dividing line is shown on sketch-map No. 2 as the line between points N and M. So far as zones 2 and 3 are concerned, it is a question of drawing the appropriate conclusions, in the application of equitable principles, from the circumstance of the marked disparity in coastal lengths, discussed in paragraphs 61 to 71 above. The Court considers that an equal division of the whole area of

overlapping claims would give too great a weight to this circumstance. Taking into account the equal division of zone 1, it considers that the requirements of equity would be met by the following division of the remainder of the area of overlapping claims: a point (o on sketch-map No. 2) is to be determined on the line between I and K such that the distance from I to O is twice the distance from O to K; the delimitation of zones 2 and 3 is then effected by the straight line from point N to this point O, and the straight line from point O to point A."

"94. For these reasons,

THE COURT,

By fourteen votes to one,

Decides that, within the limits defined

1. to the north by the intersection of the line of equidistance between the coasts of eastern Greenland and the western coasts of Jan Mayen with the 200-mile limit calculated as from the said coasts of Greenland, indicated on sketch-map No. 2 as point A, and

2. to the south, by the 200-mile limit around Iceland, as claimed by Iceland, between the points of intersection of that limit with the two said lines, indicated on sketch-map No. 2 as points B and D,

the delimitation line that divides the continental shelf and fishery zones of the Kingdom of Denmark and the Kingdom of Norway is to be drawn as set out in paragraphs 91 and 92 of the present Judgment.

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schewebel, Bedjaoui, Ni, Evensen, Tarassov, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola.

AGAINST: Judge ad hoc Fischer."

34. Vice-President Oda and Judges Evesen, Aguilar Mawdsley and Ranjeva appended declarations, Vice-President Oda and Judges Schwebel, Shahabuddeen, Weeramantry and Ajibola appended separate opinions and Judge ad hoc Fischer appended a dissenting opinion to the Judgment.

2. Aerial Incident of 3 July 1988 (Islamic Republic of Iran v. United States of America)

35. On 17 May 1989, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America, citing as bases for the Court's jurisdiction provisions of the 1944 Chicago Convention on International Civil Aviation and the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation.

36. In its Application, the Islamic Republic of Iran referred to:

"The destruction of an Iranian aircraft, Iran Air Airbus A-300B, flight 655, and the killing of its 290 passengers and crew by two surface-to-air missiles launched from the USS Vincennes, a guided-missile cruiser on duty with the United States Persian Gulf/Middle East Force in the Iranian airspace over the Islamic Republic's territorial waters in the Persian Gulf on 3 July 1988."

It contended that,

> "by its destruction of Iran Air flight 655 and taking 290 lives, its refusal to compensate the Islamic Republic for damages arising from the loss of the aircraft and individuals on board and its continuous interference with the Persian Gulf aviation",

the Government of the United States had violated certain provisions of the Chicago Convention on International Civil Aviation (7 December 1944), as amended, and of the Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation (23 September 1971), and that the Council of the International Civil Aviation Organization (ICAO) had erred in its decision of 17 March 1989 concerning the incident.

37. In its Application, the Government of the Islamic Republic of Iran requested the Court to adjudge and declare:

> "(a) that the ICAO Council decision is erroneous in that the Government of the United States has violated the Chicago Convention, including the Preamble, Articles 1, 2, 3 bis and 44 (a) and (h) and Annex 15 of the Chicago Convention as well as Recommendation 2.6/1 of the Third Middle East Regional Air Navigation Meeting of ICAO;
>
> (b) that the Government of the United States has violated Articles 1, 3 and 10 (1) of the Montreal Convention; and
>
> (c) that the Government of the United States is responsible to pay compensation to the Islamic Republic, in the amount to be determined by the Court, as measured by the injuries suffered by the Islamic Republic and the bereaved families as a result of these violations, including additional financial losses which Iran Air and the bereaved families have suffered for the disruption of their activities."

38. On 13 December 1989, the Court, having taken into account the views expressed by each of the Parties, fixed 12 June 1990 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 10 December 1990 for the filing of the Counter-Memorial of the United States of America (I.C.J. Reports 1989, p. 132). Judge Oda appended a declaration to the Order of the Court (ibid., p. 135); Judges Schwebel and Shahabuddeen appended separate opinions (ibid., pp. 136-144 and 145-160).

39. By an Order of 12 June 1990 (I.C.J. Reports 1990, p. 86), made in response to a request by the Islamic Republic of Iran and after the views of the United States of America had been ascertained, the President of the Court extended to 24 July 1990 the time-limit for the filing of the Memorial of the Islamic Republic of Iran and to 4 March 1991 the time-limit for the Counter-Memorial of the United States of America. The Memorial was filed within the prescribed time-limit.

40. On 4 March 1991, within the time-limit fixed for the filing of its Counter-Memorial, the United States of America filed certain preliminary objections to the jurisdiction of the Court. By virtue of the provisions of Article 79, paragraph 3, of the Rules of Court, the proceedings on the merits were suspended and a time-limit had to be fixed for the presentation by the other Party of a written statement of its observations and submissions on the preliminary objections. By an Order of 9 April 1991 (I.C.J. Reports 1991, p. 6), the Court, having ascertained the views of the Parties, fixed 9 December 1991 as the time-limit within which the Islamic Republic of Iran might present such observations and submissions.

41. The Islamic Republic of Iran chose Mr. Mohsen Aghahosseini to sit as judge ad hoc.

42. By Orders of 18 December 1991 (I.C.J. Reports 1991, p. 187) and 5 June 1992 (I.C.J. Reports 1992, p. 225), made in response to successive requests by the Islamic Republic of Iran and after the views of the United States had been ascertained, the President of the Court extended the above-mentioned time-limit for the written observations and submissions of the Islamic Republic of Iran on the preliminary objections to 9 June and 9 September 1992 respectively. Those observations and submissions were filed within the prescribed time-limit and were communicated to the Secretary-General of ICAO, together with the written pleadings previously filed, pursuant to Article 34, paragraph 3, of the Statute of the Court and Article 69, paragraph 3, of the Rules of Court. The President of the Court, acting under the same provisions, fixed 9 December 1992 as the time-limit for the eventual submission of written observations by the Council of ICAO. ICAO's observations were duly filed within that time-limit.

3. Certain Phosphate Lands in Nauru (Nauru v. Australia)

43. On 19 May 1989, the Republic of Nauru filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in respect of a dispute concerning of a dispute concerning the rehabilitation of certain phosphate lands mined under Australian administration before Nauruan independence. Nauru cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

44. In its Application, Nauru claimed that Australia had breached the trusteeship obligations it accepted under Article 76 of the Charter of the United Nations and under articles 3 and 5 of the Trusteeship Agreement for Nauru of 1 November 1947. Nauru further claimed that Australia had breached certain obligations towards Nauru under general international law.

45. The Republic of Nauru requested the Court to adjudge and declare:

> "that Australia has incurred an international legal responsibility and is bound to make restitution or other appropriate reparation to Nauru for the damage and prejudice suffered";

and further

> "that the nature and amount of such restitution or reparation should, in the absence of agreement between the Parties, be assessed and determined by the Court, if necessary, in a separate phase of the proceedings".

46. By an Order of 18 July 1989 (I.C.J. Reports 1989, p. 12), the Court, having ascertained the views of the Parties, fixed 20 April 1990 as the time-limit for the Memorial of Nauru and 21 January 1991 for the Counter-Memorial of Australia. The Memorial was filed within the prescribed time-limit.

47. On 16 January 1991, within the time-limit fixed for the filing of the Counter-Memorial, Australia filed certain preliminary objections whereby it asked the Court to adjudge and declare "that the Application by Nauru is inadmissible and that the Court lacks jurisdiction to hear the claims made by Nauru". In accordance with Article 79, paragraph 2, of the Rules of Court the proceedings on the merits were suspended and the Court, by an Order of 8 February 1991 (I.C.J. Reports 1991, p. 3), fixed 19 July 1991 as the

time-limit within which Nauru might present a written statement of its observations and submissions on the objections. This written statement was filed within the prescribed time-limit.

48. Oral proceedings on the issues of jurisdiction and admissibility were held from 11 to 22 November 1991. During eight public sittings, the Court heard statements made on behalf of Australia and Nauru. Members of the Court put questions to the Parties.

49. On 26 June 1992, at a public sitting, the Court delivered its Judgment on the Preliminary Objections (I.C.J. Reports 1992, p. 240), by which, with one exception, it rejected the objections and found that it had jurisdiction to entertain the Application and that the latter was admissible.

50. Judge Shahabuddeen appended a separate opinion to the Judgment (ibid., pp. 270-300); President Sir Robert Jennings, Vice-President Oda and Judges Ago and Schwebel appended dissenting opinions (ibid., pp. 301-302, 303-325, 326-328 and 329-343).

51. By an Order of 29 June 1992 (I.C.J. Reports 1992, p. 345), the President of the Court, having ascertained the views of the Parties, fixed 29 March 1993 as the time-limit for the filing of the Counter-Memorial of Australia. The Counter-Memorial was filed within the prescribed time-limit.

52. By an Order of 25 June 1993 (I.C.J. Reports 1993), the Court, taking into account the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent should be filed and fixed the following time-limits: 22 December 1993 for the Reply of Nauru and 14 September 1994 for the Rejoinder of Australia.

4. Territorial Dispute (Libyan Arab Jamahiriya/Chad)

53. On 31 August 1990, the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court a notification of an agreement between that Government and the Government of the Republic Chad, entitled "Framework Agreement on the Peaceful Settlement of the Territorial Dispute between the Great Socialist People's Libyan Arab Jamahiriya and the Republic of Chad", concluded in Algiers on 31 August 1989.

54. The "Framework Agreement" provides, in article 1, that

> "The two Parties undertake to settle first their territorial dispute by all political means, including conciliation, within a period of approximately one year, unless the Heads of State otherwise decide"

and in article 2, that

> "In the absence of a political settlement of their territorial dispute, the two Parties undertake:
>
> (a) to submit the dispute to the International Court of Justice ...".

55. According to the notification, the Court would be required:

> "In further implementation of the Accord-Cadre [Framework Agreement], and taking into account the territorial dispute between the Parties, to decide upon the limits of their respective territories in accordance with the rules of international law applicable in the matter."

56. On 3 September 1990, the Republic of Chad filed in the Registry of the Court an Application instituting proceedings against the Socialist People's Libyan Arab Jamahiriya, based on article 2 (a) of the "Framework Agreement" and subsidiarily on article 8 of the Franco-Libyan Treaty of Friendship and Good Neighbourliness of 10 August 1955.

57. By that Application, the Republic of Chad

> "respectfully requests the Court to determine the course of the frontier between the Republic of Chad and the Libyan Arab Jamahiriya, in accordance with the principles and rules of international law applicable in the matter as between the Parties".

58. Subsequently, the Agent of Chad, by a letter of 28 September 1990, informed the Court, inter alia, that his Government had noted that "its claim coincides with that contained in the notification addressed to the Court on 31 August 1990 by the Libyan Arab Jamahiriya", and considered that

> "those two notifications relate to one single case, referred to the Court in application of the Algiers Agreement, which constitutes the Special Agreement, the principal basis of the Court's jurisdiction to deal with the matter".

59. At a meeting between the President of the Court and the representatives of the Parties held on 24 October 1990, it was agreed between the Agents that the proceedings in the present case had in effect been instituted by two successive notifications of the Special Agreement constituted by the "Framework Agreement" of 31 August 1989, that filed by the Libyan Arab Jamahiriya on 31 August 1990, and the communication from the Republic of Chad filed on 3 September 1990 read in conjunction with the letter from the Agent of Chad of 28 September 1990, and that the Court should determine the procedure in the case on that basis, pursuant to Article 46, paragraph 2, of the Rules of Court.

60. Having ascertained the views of the Parties, the Court decided by an Order of 26 October 1990 (I.C.J. Reports 1990, p. 149), that, as provided in Article 46, paragraph 2, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time-limit, and fixed 26 August 1991 as the time-limit for the Memorials. Both Memorials were filed within the prescribed time-limit.

61. Chad chose Mr. Georges M. Abi-Saab and the Libyan Arab Jamahiriya Mr. José Sette-Camara to sit as judges ad hoc.

62. On 26 August 1991 (I.C.J. Reports 1991, p. 44), the President of the Court, having ascertained the views of the Parties, fixed 27 March 1992 as the time-limit for the filing of the Counter-Memorials. Both Counter-Memorials were duly filed within the prescribed time-limit.

63. By an Order of 14 April 1992 (I.C.J. Reports 1992, p. 219), the Court, having ascertained the views of the Parties, decided to authorize the presentation by each Party of a Reply within the same time-limit, and fixed 14 September 1992 as the time-limit for those Replies. Both Replies were filed within the prescribed time-limit.

64. Oral proceedings were held from 14 June to 14 July 1993. During 19 public sittings, the Court heard statements on behalf of Libya and of Chad. The President of Chad, His Excellency Colonel Idriss Deby, attended the opening sitting of 14 June.

5. East Timor (Portugal v. Australia)

65. On 22 February 1991, the Government of the Portuguese Republic filed in the Registry of the Court an Application instituting proceedings against the Commonwealth of Australia in a dispute concerning "certain activities of Australia with respect to East Timor".

66. In order to establish the basis of the Court's jurisdiction, Portugal referred, in its Application, to the Declarations made by the two States under Article 36, paragraph 2, of the Statute of the Court.

67. In the Application, the claim was made that Australia, by negotiating, with Indonesia, an "agreement relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap'", signed on 11 December 1989, by the "ratification, and the initiation of the performance" of that agreement, by the "related internal legislation", by the "negotiation of the delimitation of that shelf", and by the "exclusion of any negotiation on those matters with Portugal", had caused "particularly serious legal and moral damage to the people of East Timor and to Portugal, which will become material damage also if the exploitation of hydrocarbon resources begins".

68. Portugal requested the Court:

"(1) To adjudge and declare that, first, the rights of the people of East Timor to self-determination, to territorial integrity and unity (as defined in paragraphs 5 and 6 of the present Application) and to permanent sovereignty over its wealth and natural resources and, secondly, the duties, powers and rights of Portugal as the administering Power of the Territory of East Timor are opposable to Australia, which is under an obligation not to disregard them, but to respect them.

(2) To adjudge and declare that Australia, inasmuch as in the first place it has negotiated, concluded and initiated performance of the agreement referred to in paragraph 18 of the statement of facts, has taken internal legislative measures for the application thereof, and is continuing to negotiate, with the State party to that agreement, the delimitation of the continental shelf in the area of the 'Timor Gap'; and inasmuch as it has furthermore excluded any negotiation with the administering Power with respect to the exploration and exploitation of the continental shelf in that same area; and, finally, inasmuch as it contemplates exploring and exploiting the subsoil of the sea in the 'Timor Gap' on the basis of a plurilateral title to which Portugal is not a party (each of these facts sufficing on its own):

(a) has infringed and is infringing the right of the people of East Timor to self-determination, to territorial integrity and unity and its permanent sovereignty over its natural wealth and resources, and is in breach of the obligation not to disregard but to respect that right, that integrity and that sovereignty;

(b) has infringed and is infringing the powers of Portugal as the administering Power of the Territory of East Timor, is impeding the fulfilment of its duties to the people of East Timor and to the international community, is infringing the right of Portugal to fulfil its responsibilities and is in breach of the obligation not to disregard but to respect those powers and duties and that right;

(c) is contravening Security Council resolutions 384 and 389 and, as a consequence, is in breach of the obligation to accept and carry out

Security Council resolutions laid down by Article 25 of the Charter of the United Nations and, more generally, is in breach of the obligation incumbent on Member States to cooperate in good faith with the United Nations;

(3) To adjudge and declare that, inasmuch as it has excluded and is excluding any negotiation with Portugal as the administering Power of the Territory of East Timor, with respect to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap', Australia has failed and is failing in its duty to negotiate in order to harmonize the respective rights in the event of a conflict of rights or of claims over maritime areas.

(4) To adjudge and declare that, by the breaches indicated in paragraphs 2 and 3 of the present submissions, Australia has incurred international responsibility and has caused damage, for which it owes reparation to the people of East Timor and to Portugal, in such form and manner as may be indicated by the Court.

(5) To adjudge and declare that Australia is bound, in relation to the people of East Timor, to Portugal and to the international community, to cease from all breaches of the rights and international norms referred to in paragraphs 1, 2 and 3 of the present submissions and in particular, until such time as the people of East Timor shall have exercised its right to self-determination, under the conditions laid down by the United Nations:

(a) to refrain from any negotiation, signature or ratification of any agreement with a State other than the administering Power concerning the delimitation, and the exploration and exploitation, of the continental shelf, or the exercise of jurisdiction over that shelf, in the area of the 'Timor Gap';

(b) to refrain from any act relating to the exploration and exploitation of the continental shelf in the area of the 'Timor Gap' or to the exercise of jurisdiction over that shelf, on the basis of any plurilateral title to which Portugal, as the administering Power of the Territory of East Timor, is not a party."

69. By an Order of 3 May 1991 (I.C.J. Reports 1991, p. 9), the President of the Court, having ascertained the views of the parties at a meeting with their Agents held on 2 May 1992, fixed the following time-limits: 18 November 1991 for the filing of the Portuguese Memorial and 1 June 1992 for the Australian Counter-Memorial. Both the Memorial and Counter-Memorial were filed within the prescribed time-limits.

70. Portugal chose Mr. António de Arruda Ferrer-Correia and Australia Sir Ninian Stephen to sit as judges ad hoc.

71. By an Order of 19 June 1992 (I.C.J. Reports 1992, p. 228), the Court, having ascertained the views of the Parties, fixed 1 December 1992 as the time-limit for the filing of a Reply by Portugal and 1 June 1993 for the filing of a Rejoinder by Australia. The Reply was filed within the prescribed time-limit.

72. Australia filed its Rejoinder following an Order of 19 May 1993 (I.C.J. Reports 1993, p. 32) by which the President of the Court, upon the request of Australia and after Portugal had indicated that it had no objection, had extended the time-limit for the filing of that Rejoinder to 1 July 1993.

6. Maritime Delimitation between Guinea-Bissau and Senegal (Guinea-Bissau v. Senegal)

73. On 12 March 1991, the Government of the Republic of Guinea-Bissau filed in the Registry of the Court an Application instituting proceedings against the Republic of Senegal in a dispute concerning the delimitation of all the maritime territories between the two States. Guinea-Bissau cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

74. In its Application, Guinea-Bissau recalled that, by an Application dated 23 August 1989, it referred to the Court a dispute concerning the existence and validity of the Arbitral Award made on 31 July 1989 by the Arbitration Tribunal formed to determine the maritime boundary between the two States.

75. Guinea-Bissau claimed that the objective of the request laid before the Arbitration Tribunal was the delimitation of the maritime territories appertaining respectively to one and the other State. According to Guinea-Bissau, the decision of the Arbitration Tribunal of 31 July 1989, however, did not make it possible to draw a definitive delimitation of all the maritime areas over which the Parties had rights. Moreover, whatever the outcome of the proceedings pending before the Court, a real and definitive delimitation of all the maritime territories between the two States would still not be realized.

76. The Government of Guinea-Bissau asked the Court to adjudge and declare:

> "What should be, on the basis of the international law of the sea and of all the relevant elements of the case, including the future decision of the Court in the case concerning the Arbitral 'award' of 31 July 1989, the line (to be drawn on a map) delimiting all the maritime territories appertaining respectively to Guinea-Bissau and Senegal."

77. In its Judgment of 12 November 1991 in the case concerning the Arbitral Award of 31 July 1989 (Guinea-Bissau v. Senegal) (I.C.J. Reports 1991, p. 53), the Court took note of the filing of a second Application but added:

> "67. ...
>
> It has also taken note of the declaration made by the Agent of Senegal in the present proceedings, according to which one solution
>
> > 'would be to negotiate with Senegal, which has no objection to this, a boundary for the exclusive economic zone or, should it prove impossible to reach an agreement, to bring the matter before the Court'.
>
> 68. Having regard to that Application and that declaration, and at the close of a long and difficult arbitral procedure and of these proceedings before the Court, the Court considers it highly desirable that the elements of the dispute that were not settled by the Arbitral Award of 31 July 1989 be resolved as soon as possible, as both Parties desire."

78. After the two Governments concerned had had time to study that Judgment, the President of the Court convened a meeting with the representatives of the parties on 28 February 1992, at which, however, they requested that no time-limit be fixed for the initial pleadings in the case, pending the outcome of negotiations on the question of maritime delimitation; those negotiations

were to continue for six months in the first instance, after which, if they had not been successful, a further meeting would be held with the President.

79. No indications having been received from the Parties as to the state of their negotiations, the President convened a further meeting with the Agents on 6 October 1992. The Agents stated that some progress had been made toward an agreement, and a joint request was made by the two Parties that a further period of three months, with a possible further extension of three months, be allowed for continuation of the negotiations. The President agreed to this, and expressed satisfaction at the efforts being made by the Parties to resolve their dispute by negotiation, in the spirit of the recommendation made in the Judgment of 12 November 1991.

7. Passage through the Great Belt (Finland v. Denmark)

80. On 17 May 1991, the Republic of Finland filed in the Registry of the Court an Application instituting proceedings against the Kingdom of Denmark in respect of a dispute concerning the question of passage of oil rigs through the Great Belt (Storebaelt - one of the three straits linking the Baltic to the Kattegat and thence to the North Sea). Finland cited as bases for the Court's jurisdiction the declarations made by both States under Article 36, paragraph 2, of the Statute.

81. In its Application, Finland contended that there was no foundation in international law for the unilateral exclusion by Denmark, through the projected construction of a "high-level bridge ... 65 metres above mean sea level", of the passage between the Baltic and the North Sea by vessels such as drill ships and oil rigs or other existing or reasonably foreseeable ships with a height of 65 metres or above to and from Finnish shipyards and ports. Such exclusion allegedly violated Finland's rights in respect of free passage through the Great Belt as established by the relevant conventions and customary international law. Finland recognized that Denmark was fully entitled, as the territorial sovereign, to take measures to improve its internal and international traffic connections, but contended that Denmark's entitlement to take such measures was necessarily limited by the established rights and interests of all States, and of Finland in particular, in the maintenance of the legal regime of free passage through the Danish straits. In Finland's view, those rights had been ignored by Denmark's refusal to enter into negotiations with Finland in order to find a solution and by its insistence that the planned bridge project be completed without modification.

82. Accordingly, the Republic of Finland, reserving its right to modify or to add to its submissions and in particular its right to claim compensation for any damage or loss arising from the bridge project, asked the Court to adjudge and declare:

"(a) that there is a right of free passage through the Great Belt which applies to all ships entering and leaving Finnish ports and shipyards;

(b) that this right extends to drill ships, oil rigs and reasonably foreseeable ships;

(c) that the construction of a fixed bridge over the Great Belt as currently planned by Denmark would be incompatible with the right of passage mentioned in subparagraphs (a) and (b) above;

(d) that Denmark and Finland should start negotiations, in good faith, on how the right of free passage, as set out in subparagraphs (a) to (c) above, shall be guaranteed."

83. On 23 May 1991, Finland filed in the Registry a request for the indication of provisional measures, contending that "construction work for the East Channel bridge would prejudice the very outcome of the dispute"; that "the object of the Application relates precisely to the right of passage which the completion of the bridge project in its planned form will effectively deny"; and that "in particular, the continuation of the construction work prejudices the negotiating result which the Finnish submissions in the Application aim to attain".

84. Finland accordingly requested the Court to indicate the following provisional measures:

> "(1) Denmark should, pending the decision by the Court on the merits of the present case, refrain from continuing or otherwise proceeding with such construction works in connection with the planned bridge project over the East Channel of the Great Belt as would impede the passage of ships, including drill ships and oil rigs, to and from Finnish ports and shipyards;"
>
> "(2) Denmark should refrain from any other action that might prejudice the outcome of the present proceedings."

85. Finland chose Mr. Bengt Broms and Denmark Mr. Paul Henning Fischer to sit as judges ad hoc.

86. Between 1 and 5 July 1991, the Court, at six public sittings, heard the oral observations of both Parties on the request for provisional measures.

87. At a public sitting held on 29 July 1991, the Court read the Order on the request for provisional measures filed by Finland (I.C.J. Reports 1991, p. 12), in which it found that "the circumstances, as they now present themselves to the Court, are not such as to require the exercise of its power under Article 41 of the Statute to indicate provisional measures". Judge Tarassov appended a declaration (I.C.J. Reports 1991, pp. 22-24), and Vice-President Oda, Judge Shahabuddeen and Judge ad hoc Broms appended separate opinions to the Order (ibid., pp. 25-27, 28-36 and 37-39).

88. By another Order of the same date (I.C.J. Reports 1991, p. 41), the President of the Court, having ascertained the views of the Parties at a meeting with their Agents held on the same day, fixed the following time-limits: 30 December 1991 for the filing of the Memorial of Finland and 1 June 1992 for the filing of the Counter-Memorial of Denmark. Both the Memorial and the Counter-Memorial were filed within the prescribed time-limits.

89. In the order on the request by Finland for the indication of provisional measures, the Court had declared, inter alia, that "pending a decision of the Court on the merits, any negotiation between the Parties with a view to achieving a direct and friendly settlement is to be welcomed".

90. By a letter dated 3 September 1992, the Agent of Finland, referring to the passage quoted above, stated that a settlement of the dispute had been attained and accordingly notified the Court of the discontinuance of the case by Finland.

91. By a letter dated 4 September 1992, the Agent of Denmark, to whom a copy of the letter from the Agent of Finland had been communicated, stated that Denmark had no objection to the discontinuance.

92. Consequently, the President of the Court, on 10 September 1992, made an Order recording the discontinuance of the proceedings and directing the removal of the case from the Court's list (I.C.J. Reports 1992, p. 348).

8. Maritime Delimitation and Territorial Questions between Qatar and Bahrain (Qatar v. Bahrain)

93. On 8 July 1991, the Government of the State of Qatar filed in the Registry of the Court an Application instituting proceedings against the Government of the State of Bahrain

> "in respect of certain existing disputes between them relating to sovereignty over the Hawar islands, sovereign rights over the shoals of Dibal and Qit'at Jaradah, and the delimitation of the maritime areas of the two States".

94. Qatar claimed that its sovereignty over the Hawar islands was well founded on the basis of customary international law and applicable local practices and customs. It had therefore continuously opposed a decision announced by the British Government in 1939, during the time of the British presence in Bahrain and Qatar (which came to an end in 1971), that the islands belonged to Bahrain. This decision was, in the view of Qatar, invalid, beyond the power of the British in relation to the two States, and not binding on Qatar.

95. With regard to the shoals of Dibal and Qit'at Jaradah, a further decision of the British Government in 1947 to delimit the seabed boundary between Bahrain and Qatar purported to recognize that Bahrain had "sovereign rights" in the areas of those shoals. In that decision, the view was expressed that the shoals should not be considered to be islands having territorial waters. Qatar had claimed and continued to claim that such sovereign rights as existed over the shoals belonged to Qatar; it also considered, however, that those were shoals and not islands. Bahrain claimed in 1964 that Dibal and Qit'at Jaradah were islands possessing territorial waters, and belonged to Bahrain, a claim rejected by Qatar.

96. With regard to the delimitation of the maritime areas of the two States, in the letter informing the Rulers of Qatar and Bahrain of the 1947 decision it was stated that the British Government considered that the line divided "in accordance with equitable principles" the seabed between Qatar and Bahrain, and that it was a median line based generally on the configuration of the coastline of the Bahrain main island and the peninsula of Qatar. The letter further specified two exceptions. One concerned the status of the shoals; and the other that of the Hawar islands.

97. Qatar stated that it did not oppose that part of the delimitation line which the British Government stated was based on the configuration of the coastline of the two States and was determined in accordance with equitable principles. It had been rejecting and still rejected the claim made in 1964 by Bahrain (which had refused to accept the above-mentioned delimitation by the British Government) of a new line delimiting the seabed boundary of the two States. Qatar based its claims with respect to delimitation on customary international law and applicable local practices and customs.

98. The State of Qatar therefore requested the Court:

> "I. To adjudge and declare in accordance with international law
>
> (A) that the State of Qatar has sovereignty over the Hawar islands;

and

(B) that the State of Qatar has sovereign rights over Dibal and Qit'at Jaradah shoals;

and

II. With due regard to the line dividing the seabed of the two States as described in the British decision of 23 December 1947, to draw in accordance with international law a single maritime boundary between the maritime areas of seabed, subsoil and superjacent waters appertaining respectively to the State of Qatar and State of Bahrain."

99. In the Application, Qatar founded the jurisdiction of the Court upon certain agreements between the Parties stated to have been concluded in December 1987 and December 1990, the subject and scope of the commitment to jurisdiction being determined, according to Qatar, by a formula proposed by Bahrain to Qatar on 26 October 1988 and accepted by Qatar in December 1990.

100. By letters addressed to the Registrar of the Court on 14 July 1991 and 18 August 1991, Bahrain contested the basis of jurisdiction invoked by Qatar.

101. At a meeting held on 2 October 1991 to enable the President of the Court to ascertain their views, the Parties reached agreement as to the desirability of the proceedings being initially devoted to the questions of the Court's jurisdiction to entertain the dispute and the admissibility of the Application. The President accordingly made, on 11 October 1991, an Order (I.C.J. Reports 1991, p. 50) deciding that the written proceedings should first be addressed to those questions; in the same Order he fixed the following time-limits in accordance with a further agreement reached between the Parties at the meeting of 2 October: 10 February 1992 for the Memorial of Qatar, and 11 June 1992 for the Counter-Memorial of Bahrain. The Memorial and Counter-Memorial were filed within the prescribed time-limits.

102. By an Order of 26 June 1992 (I.C.J. Reports 1992, p. 237), the Court, having ascertained the views of the Parties, directed that a Reply by the Applicant and a Rejoinder by the Respondent be filed on the questions of jurisdiction and admissibility. It fixed 28 September 1992 as the time-limit for the Reply of Qatar and 29 December 1992 for the Rejoinder of Bahrain. Both the Reply and the Rejoinder were filed within the prescribed time-limits.

103. Qatar chose Mr. José Maria Ruda and Bahrain Mr. Nicolas Valticos to sit as judges ad hoc.

9, 10. Questions of Interpretation and Application of the 1971 Montreal Convention arising from the Aerial Incident at Lockerbie (Libyan Arab Jamahiriya v. United Kingdom) and (Libyan Arab Jamahiriya v. United States of America)

104. On 3 March 1992, the Government of the Socialist People's Libyan Arab Jamahiriya filed in the Registry of the Court two separate Applications instituting proceedings against the Government of the United Kingdom of Great Britain and Northern Ireland and against the United States of America in respect of a dispute over the interpretation and application of the Montreal Convention of 23 September 1971, a dispute arising from acts resulting in the aerial incident that occurred over Lockerbie, Scotland, on 21 December 1988.

105. In the Applications, the Libyan Arab Jamahiriya referred to the charging and indictment of two Libyan nationals by the Lord Advocate of Scotland and by a Grand Jury of the United States respectively, with having caused a bomb to be placed aboard Pan-Am flight 103. The bomb subsequently exploded, causing the aeroplane to crash, and all persons aboard were killed.

106. The Libyan Arab Jamahiriya maintained that the acts alleged constituted an offence within the meaning of article 1 of the Montreal Convention, which it claimed to be the only appropriate convention in force between the Parties, and claimed that it had fully complied with its own obligations under that instrument, article 5 of which required a State to establish its own jurisdiction over alleged offenders present in its territory in the event of their non-extradition; there was no extradition treaty between the Libyan Arab Jamahiriya and the respective other Parties, and the Libyan Arab Jamahiriya was obliged under article 7 of the Convention to submit the case to its competent authorities for the purpose of prosecution.

107. The Libyan Arab Jamahiriya contended that the United Kingdom and the United States were in breach of the Montreal Convention through rejection of its efforts to resolve the matter within the framework of international law, including the Convention itself, in that they were placing pressure upon the Libyan Arab Jamahiriya to surrender the two Libyan nationals for trial.

108. According to the Applications, it had not been possible to settle by negotiation the disputes that had thus arisen, neither had the Parties been able to agree upon the organization of an arbitration to hear the matter. The Libyan Arab Jamahiriya therefore submitted the disputes to the Court on the basis of article 14, paragraph 1, of the Montreal Convention.

109. The Libyan Arab Jamahiriya requested the Court to adjudge and declare as follows:

(a) that Libya has fully complied with all of its obligations under the Montreal Convention;

(b) that the United Kingdom and the United States respectively have breached, and are continuing to breach, their legal obligations to Libya under articles 5 (2), 5 (3), 7, 8 (2) and 11 of the Montreal Convention; and

(c) that the United Kingdom and the United States respectively are under a legal obligation immediately to cease from such breaches and from the use of any and all force or threats against Libya, including the threat of force against Libya, and from all violations of the sovereignty, territorial integrity, and the political independence of Libya.

110. Later the same day, the Libyan Arab Jamahiriya made two separate requests to the Court to indicate forthwith the following provisional measures:

(a) to enjoin the United Kingdom and the United States respectively from taking any action against Libya calculated to coerce or compel Libya to surrender the accused individuals to any jurisdiction outside of Libya; and

(b) to ensure that no steps are taken that would prejudice in any way the rights of Libya with respect to the legal proceedings that are the subject of Libya's Applications.

111. In those requests, the Libyan Arab Jamahiriya also requested the President, pending the meeting of the Court, to exercise the power conferred on him by Article 74, paragraph 4, of the Rules of Court, to call upon the Parties to act in such a way as to enable any Order the Court might make on the Libyan Arab Jamahiriya request for provisional measures to have its appropriate effects.

112. By a letter of 6 March 1992, the Legal Adviser of the United States Department of State, referring to the specific request made by the Libyan Arab Jamahiriya under Article 74, paragraph 4, of the Rules of Court, in its request for the indication of provisional measures, stated inter alia, that

> "taking into account both the absence of any concrete showing of urgency relating to the request and developments in the ongoing action by the Security Council and the Secretary-General in this mater ... the action requested by Libya ... is unnecessary and could be misconstrued".

113. The Libyan Arab Jamahiriya chose Mr. Ahmed S. El-Kosheri to sit as judge ad hoc.

114. At the opening of the hearings on the request for the indication of provisional measures on 26 March 1992, the Vice-President of the Court, exercising the functions of the presidency in the case, referred to the request made by the Libyan Arab Jamahiriya under Article 74, paragraph 4, of the Rules of Court and stated that, after the most careful consideration of all the circumstances then known to him, he had come to the conclusion that it would not be appropriate for him to exercise the discretionary power conferred on the President by that provision. At five public sittings held on 26, 27 and 28 March 1992, both Parties in each of the two cases presented oral arguments on the request for the indication of provisional measures. A Member of the Court put questions to both Agents in each of the two cases and the Judge ad hoc put a question to the Agent of the Libyan Arab Jamahiriya.

115. At a public sitting held on 14 April 1992, the Court read the two Orders on the requests for indication of provisional measures filed by the Libyan Arab Jamahiriya (I.C.J. Reports 1992, pp. 3 and 114), in which it found that the circumstances of the case were not such as to require the exercise of its power to indicate such measures.

116. Acting President Oda (ibid., pp. 17-19 and 129-131) and Judge Ni (ibid., pp. 20-23 and 132-135) each appended a declaration to the Orders of the Court; Judges Evensen, Tarassov, Guillaume and Aguilar Mawdsley appended a joint declaration (ibid., pp. 24-25 and 136-137). Judges Lache (ibid., pp. 26-27 and 138-139) and Shahabuddeen (ibid., pp. 28-32 and 140-142) appended separate opinions; and Judges Bedjaoui (ibid., pp. 33-49 and 143-159), Weeramantry (ibid., pp. 50-71 and 160-181), Ranjeva (ibid., pp. 72-77 and 182), Ajibola (ibid., pp. 78-93 and 183-198) and Judge ad hoc El-Kosheri (ibid., pp. 94-112 and 199-217) appended dissenting opinions to the Orders.

117. By Orders of 19 June 1992 (I.C.J. Reports 1992, pp. 231 and 234), the Court, taking into account that the length of time-limits had been agreed by the Parties at a meeting held on 5 June 1992 with the Vice-President of the Court, exercising the function of the presidency in the two cases, fixed 20 December 1993 as the time-limit for the filing of the Memorial of the Libyan Arab Jamahiriya and 20 June 1995 for the filing of the Counter-Memorials of the United Kingdom and the United States of America.

11. Oil Platforms (Islamic Republic of Iran v. United States of America)

118. On 2 November 1992, the Islamic Republic of Iran filed in the Registry of the Court an Application instituting proceedings against the United States of America with respect to the destruction of Iranian oil platforms.

119. The Islamic Republic of Iran founded the jurisdiction of the Court for the purposes of these proceedings on article XXI(2) of the Iran/United States Treaty of Amity, Economic Relations and Consular Rights, signed at Tehran on 15 August 1955.

120. In its Application, the Islamic Republic of Iran alleged that the destruction caused by several warships of the United States Navy, on 19 October 1987 and 18 April 1988, to three offshore oil production complexes, owned and operated for commercial purposes by the National Iranian Oil Company, constituted a fundamental breach of various provisions of the Treaty of Amity and of international law. In that connection, the Islamic Republic of Iran referred in particular to articles I and X(1) of the Treaty which provide respectively: "There shall be firm and enduring peace and sincere friendship between the United States of America and Iran", and "Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

121. The Islamic Republic of Iran accordingly requested the Court to adjudge and declare as follows:

"(a) That the Court has jurisdiction under the Treaty of Amity to entertain the dispute and to rule upon the claims submitted by the Islamic Republic;

(b) That in attacking and destroying the oil platforms referred to in the Application on 19 October 1987 and 18 April 1988, the United States breached its obligations to the Islamic Republic, inter alia, under article I and X(1) of the Treaty of Amity and international law;

(c) That in adopting a patently hostile and threatening attitude towards the Islamic Republic that culminated in the attack and destruction of the Iranian oil platforms, the United States breached the object and purpose of the Treaty of Amity, including articles I and X(1), and international law;

(d) That the United States is under an obligation to make reparations to the Islamic Republic for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. The Islamic Republic reserves the right to introduce and present to the Court in due course a precise evaluation of the reparations owed by the United States; and

(e) Any other remedy the Court may deem appropriate."

122. By an Order of 4 December 1992 (I.C.J. Reports 1992, p. 763), the President of the Court, taking into account an agreement of the Parties, fixed 31 May 1993 as the time-limit for the filing of the Memorial of the Islamic Republic of Iran and 30 November 1993 for the filing of the Counter-Memorial of the United States.

123. By an Order of 3 June 1993 (I.C.J. Reports 1993, p. 35), the President of the Court, upon the request of the Islamic Republic of Iran and after the United States had indicated that it had no objection, extended those time-limits to 8 June and 16 December 1993, respectively. The Memorial was filed within the prescribed time-limit.

12. Application of the Convention on the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia (Serbia and Montenegro))

124. On 20 March 1993, the Republic of Bosnia and Herzegovina filed in the Registry of the Court an Application instituting proceedings against Yugoslavia (Serbia and Montenegro) "for violating the Genocide Convention".

125. The Application referred to several provisions of the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, as well as of the Charter of the United Nations, which Bosnia and Herzegovina alleged were violated by Yugoslavia (Serbia and Montenegro). It also referred in this respect to the four Geneva Conventions of 1949 and their Additional Protocol I of 1977, to the Hague Regulations on Land Warfare of 1907, and to the Universal Declaration of Human Rights.

126. The Application referred to article IX of the Genocide Convention as the basis for the jurisdiction of the Court.

127. In the Application, Bosnia and Herzegovina requested the Court to adjudge and declare:

(a) that Yugoslavia (Serbia and Montenegro) has breached, and is continuing to breach, its legal obligations toward the people and State of Bosnia and Herzegovina under articles I, II(a), II(b), II(c), II(d), III(a), III(b), III(c), III(d), III(e), IV, and V of the Genocide Convention.

(b) that Yugoslavia (Serbia and Montenegro) has violated and is continuing to violate its legal obligations toward the people and State of Bosnia and Herzegovina under the four Geneva Conventions of 1949, their Additional Protocol I of 1977, the customary international laws of war, including the Hague Regulations on Land Warfare of 1907, and other fundamental principles of international humanitarian law.

(c) that Yugoslavia (Serbia and Montenegro) has violated and continues to violate articles 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 26 and 28 of the Universal Declaration of Human Rights with respect to the citizens of Bosnia and Herzegovina.

(d) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has killed, murdered, wounded, raped, robbed, tortured, kidnapped, illegally detained and exterminated the citizens of Bosnia and Herzegovina, and is continuing to do so.

(e) that in its treatment of the citizens of Bosnia and Herzegovina, Yugoslavia (Serbia and Montenegro) has violated, and is continuing to violate, its

solemn obligations under Articles 1(3), 55 and 56 of the Charter of the United Nations.

(f) that Yugoslavia (Serbia and Montenegro) has used and is continuing to use force and the threat of force against Bosnia and Herzegovina in violation of Articles 2(1), 2(2), 2(3), 2(4), and 33(1), of the Charter of the United Nations.

(g) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has used and is using force and the threat of force against Bosnia and Herzegovina.

(h) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has violated and is violating the sovereignty of Bosnia and Herzegovina by:

- armed attacks against Bosnia and Herzegovina by air and land;

- aerial trespass into Bosnian airspace;

- efforts by direct and indirect means to coerce and intimidate the Government of Bosnia and Herzegovina.

(i) that Yugoslavia (Serbia and Montenegro), in breach of its obligations under general and customary international law, has intervened and is intervening in the internal affairs of Bosnia and Herzegovina.

(j) that Yugoslavia (Serbia and Montenegro), in recruiting, training arming, equipping, financing, supplying and otherwise encouraging, supporting, aiding, and directing military and paramilitary actions in and against Bosnia and Herzegovina by means of its agents and surrogates, has violated and is violating its express charter and treaty obligations to Bosnia and Herzegovina and, in particular, its charter and treaty obligations under Article 2(4) of the Charter of the United Nations, as well as its obligations under general and customary international law.

(k) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right to defend itself and its people under Article 51 of the Charter of the United Nations and customary international law, including by means of immediately obtaining military weapons, equipment, supplies and troops from other States.

(l) that under the circumstances set forth above, Bosnia and Herzegovina has the sovereign right under Article 51 of the Charter of the United Nations and customary international law to request the immediate assistance of any State to come to its defence, including by military means (weapons, equipment supplies, troops, etc.).

(m) that Security Council resolution 713 (1991), imposing a weapons embargo upon the former Yugoslavia, must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of Article 51 of the Charter of the United Nations and the rules of customary international law.

(n) that all subsequent Security Council resolutions that refer to or reaffirm resolution 713 (1991) must be construed in a manner that shall not impair the inherent right of individual or collective self-defence of Bosnia and Herzegovina under the terms of Article 51 of the Charter of the United Nations and the rules of customary international law.

(o) that Security Council resolution 713 (1991) and all subsequent Security Council resolutions referring thereto or reaffirming it must not be construed to impose an arms embargo upon Bosnia and Herzegovina, as required by Articles 24(1) and 51 of the Charter of the United Nations and in accordance with the customary doctrine of ultra vires.

(p) that pursuant to the right of collective self-defence recognized by Article 51 of the Charter of the United Nations, all other State parties to the Charter have the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing it with weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

(q) that Yugoslavia (Serbia and Montenegro) and its agents and surrogates are under an obligation to cease and desist immediately from its breaches of the foregoing legal obligations, and is under a particular duty to cease and desist immediately:

- from its systematic practice of so-called "ethnic cleansing" of the citizens and sovereign territory of Bosnia and Herzegovina;

- from the murder, summary execution, torture, rape, kidnapping, mayhem, wounding, physical and mental abuse, and detention of the citizens of Bosnia and Herzegovina;

- from the wanton devastation of villages, towns, districts, cities, and religious institutions in Bosnia and Herzegovina;

- from the bombardment of civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

- from continuing the siege of any civilian population centres in Bosnia and Herzegovina, and especially its capital, Sarajevo;

- from the starvation of the civilian population in Bosnia and Herzegovina;

- from the interruption of, interference with, or harassment of humanitarian relief supplies to the citizens of Bosnia and Herzegovina by the international community;

- from all use of force - whether direct or indirect, overt or covert - against Bosnia and Herzegovina, and from all threats of force against Bosnia and Herzegovina;

- from all violations of the sovereignty, territorial integrity or political independence of Bosnia and Herzegovina, including all intervention, direct or indirect, in the internal affairs of Bosnia and Herzegovina;

- from all support of any kind - including the provision of training, arms, ammunition, finances, supplies, assistance, direction or any other form of support - to any nation, group, organization, movement or individual engaged or planning to engage in military or paramilitary actions in or against Bosnia and Herzegovina.

(r) that Yugoslavia (Serbia and Montenegro) has an obligation to pay Bosnia and Herzegovina, in its own right and as parens patriae for its citizens, reparations for damages to persons and property as well as to the Bosnian economy and environment caused by the foregoing violations of international

law in a sum to be determined by the Court. Bosnia and Herzegovina reserves the right to introduce to the Court a precise evaluation of the damages caused by Yugoslavia (Serbia and Montenegro).

128. On the same day, the Government of Bosnia and Herzegovina, stating that:

> "The overriding objective of this request is to prevent further loss of human life in Bosnia and Herzegovina",

and that:

> "The very lives, well-being, health, safety, physical, mental and bodily integrity, homes, property and personal possessions of hundreds of thousands of people in Bosnia and Herzegovina are right now at stake, hanging in the balance, awaiting the order of this Court",

filed a request for the indication of provisional measures under Article 41 of the Statute of the Court.

129. The provisional measures requested were as follows:

> "1. That Yugoslavia (Serbia and Montenegro), together with its agents and surrogates in Bosnia and elsewhere, must immediately cease and desist from all acts of genocide and genocidal acts against the people and State of Bosnia and Herzegovina, including but not limited to murder; summary executions; torture; rape; mayhem; so-called "ethnic cleansing"; the wanton devastation of villages, towns, districts and cities; the siege of villages, towns, districts and cities; the starvation of the civilian population; the interruption of, interference with, or harassment of humanitarian relief supplies to the civilian population by the international community; the bombardment of civilian population centres; and the detention of civilians in concentration camps or otherwise.
>
> 2. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support - including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support - to any nation, group, organization, movement, militia or individual engaged in or planning to engage in military or paramilitary activities in or against the people, State and Government of Bosnia and Herzegovina.
>
> 3. That Yugoslavia (Serbia and Montenegro) itself must immediately cease and desist from any and all types of military or paramilitary activities by its own officials, agents, surrogates, or forces in or against the people, State and Government of Bosnia and Herzegovina, and from any other use or threat of force in its relations with Bosnia and Herzegovina.
>
> 4. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to seek and receive support from other States in order to defend itself and its people, including by means of immediately obtaining military weapons, equipment and supplies.
>
> 5. That under the current circumstances, the Government of Bosnia and Herzegovina has the right to request the immediate assistance of any State to come to its defence, including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, airpeople, etc.).

6. That under the current circumstances, any State has the right to come to the immediate defence of Bosnia and Herzegovina - at its request - including by means of immediately providing weapons, military equipment and supplies, and armed forces (soldiers, sailors, and airpeople, etc.)."

130. Hearings on the request for the indication of provisional measures were held on 1 and 2 April 1993. At two public sittings, the Court heard the oral observations of each of the Parties. A Member of the Court put a question to both Agents.

131. At a public sitting held on 8 April 1993, the President of the Court read the Order on the request for provisional measures made by Bosnia and Herzegovina (I.C.J. Reports 1993, p. 3), the operative paragraph of which reads as follows:

"52. For these reasons,

The COURT,

Indicates, pending its final decision in the proceedings instituted on 20 March 1993 by the Republic of Bosnia and Herzegovina against the Federal Republic of Yugoslavia (Serbia and Montenegro), the following provisional measures:

A. (1) Unanimously,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should immediately, in pursuance of its undertaking in the Convention on the Prevention and Punishment of the Crime of Genocide of 9 December 1948, take all measures within its power to prevent commission of the crime of genocide;

(2) By 13 votes to 1,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) should in particular ensure that any military, paramilitary or irregular armed units which may be directed or supported by it, as well as any organizations and persons which may be subject to its control, direction or influence, do not commit any acts of genocide, of conspiracy to commit genocide, of direct and public incitement to commit genocide, or of complicity in genocide, whether directed against the Muslim population of Bosnia and Herzegovina or against any other national, ethnical, racial or religious group;

IN FAVOUR: President Sir Robert Jennings; Vice-President Oda; Judges Ago, Schwebel, Bedjaoui, Ni, Evensen, Guillaume, Shahabuddeen, Aguilar Mawdsley, Weeramantry, Ranjeva, Ajibola.

AGAINST: Judge Tarassov.

B. Unanimously,

The Government of the Federal Republic of Yugoslavia (Serbia and Montenegro) and the Government of the Republic of Bosnia and Herzegovina should not take any action and should ensure that no action is taken which may aggravate or extend the existing dispute over the prevention or punishment of the crime of genocide, or render it more difficult of solution."

Judge Tarassov appended a declaration to the Order (ibid., pp. 26-27).

132. By an Order of 16 April 1993 (I.C.J. Reports 1993, p. 29), the President of the Court, taking into account an agreement of the Parties, fixed 15 October 1993 as the time-limit for the filing of the Memorial of Bosnia and Herzegovina and 15 April 1994 for the filing of the Counter-Memorial of Yugoslavia (Serbia and Montenegro).

133. Bosnia and Herzegovina chose Mr. Elihu Lauterpacht to sit as judge ad hoc.

134. On 27 July 1993, the Republic of Bosnia and Herzegovina filed a second request for the indication of provisional measures, stating that:

> "This extraordinary step is being taken because the Respondent has violated each and everyone of the three measures of protection on behalf of Bosnia and Herzegovina that were indicated by this Court on 8 April 1993, to the grave detriment of both the people and State of Bosnia and Herzegovina. In addition to continuing its campaign of genocide against the Bosnian people - whether Muslim, Christian, Jew, Croat or Serb - the Respondent is now planning, preparing, conspiring to, proposing, and negotiating the partition, dismemberment, annexation and incorporation of the sovereign state of Bosnia and Herzegovina - a Member of the United Nations Organization - by means of genocide."

The provisional measures then requested were as follows:

> "1. That Yugoslavia (Serbia and Montenegro) must immediately cease and desist from providing, directly or indirectly, any type of support - including training, weapons, arms, ammunition, supplies, assistance, finances, direction or any other form of support - to any nation, group, organization, movement, military, militia or paramilitary force, irregular armed unit, or individual in Bosnia and Herzegovina for any reason or purpose whatsoever.
>
> 2. That Yugoslavia (Serbia and Montenegro) and all of its public officials - including and especially the President of Serbia, Mr. Slobodan Milosevic - must immediately cease and desist from any and all efforts, plans, plots, schemes, proposals or negotiations to partition, dismember, annex or incorporate the sovereign territory of Bosnia and Herzegovina.
>
> 3. That the annexation or incorporation of any sovereign territory of the Republic of Bosnia and Herzegovina by Yugoslavia (Serbia and Montenegro) by any means or for any reason shall be deemed illegal, null, and void ab initio.
>
> 4. That the Government of Bosnia and Herzegovina must have the means 'to prevent' the commission of acts of genocide against its own people as required by article I of the Genocide Convention.
>
> 5. That all Contracting Parties to the Genocide Convention are obliged by article I thereof 'to prevent' the commission of acts of genocide against the people and State of Bosnia and Herzegovina.
>
> 6. That the Government of Bosnia and Herzegovina must have the means to defend the people and State of Bosnia and Herzegovina from acts of genocide and partition and dismemberment by means of genocide.

7. That all Contracting Parties to the Genocide Convention have the obligation thereunder 'to prevent' acts of genocide, and partition and dismemberment by means of genocide, against the people and State of Bosnia and Herzegovina.

8. That in order to fulfil its obligations under the Genocide Convention under the current circumstances, the Government of Bosnia and Herzegovina must have the ability to obtain military weapons, equipment and supplies from other Contracting Parties.

Hearings on this second request for the indication of provisional measures will open on Wednesday, 25 August 1993.

9. That in order to fulfil their obligations under the Genocide Convention under the current circumstances, all Contracting Parties thereto must have the ability to provide military weapons, equipment, supplies and armed forces (soldiers, sailors, airpeople) to the Government of Bosnia and Herzegovina at its request.

10. That United Nations peace-keeping forces in Bosnia and Herzegovina (i.e., the United Nations Protection Force (UNPROFOR) must do all in their power to ensure the flow of humanitarian relief supplies to the Bosnian People through the Bosnian city of Tuzia."

135. Hearings on this second request for the indication of provisional measures will open on Wednesday, 25 August 1993.

13. Gabcíkovo-Nagymaros Project (Hungary/Slovakia)

136. On 23 October 1992, the Ambassador of the Republic of Hungary to the Netherlands presented at the International Court of Justice an Application against the Czech and Slovak Federal Republic in the dispute concerning the projected diversion of the Danube. In that document the Hungarian Government, before detailing its case, invited the Czech and Slovak Federal Republic to accept the jurisdiction of the Court.

137. A copy of the Application was transmitted to the Government of the Czech and Slovak Federal Republic in accordance with Article 38, paragraph 5, of the Rules of Court, which reads as follows:

"When the Applicant State proposes to found the jurisdiction of the Court upon a consent thereto yet to be given or manifested by the State against which such application is made, the application shall be transmitted to that State. It shall not however be entered in the General List, nor any action be taken in the proceedings, unless and until the State against which such application is made consents to the Court's jurisdiction for the purposes of the case."

138. Following negotiations under the aegis of the European Communities between Hungary and the Czech and Slovak Federal Republic, which dissolved into two separate States on 1 January 1993, the Governments of the Republic of Hungary and of the Slovak Republic notified jointly, on 2 July 1993, to the Registrar of the Court a Special Agreement, signed at Brussels on 7 April 1993, for the submission to the Court of certain issues arising out of differences which had existed between the Republic of Hungary and the Czech and Slovak Federal Republic, regarding the implementation and the termination of the Budapest Treaty of 16 September 1977 on the Construction and Operation of the Gabcíkovo-Nagymaros Barrage System and on the construction and operation of the

"provisional solution". The Special Agreement records that the Slovak Republic is in this respect the sole successor State of the Czech and Slovak Republic.

In article 2 of the Special Agreement:

> "(1) The Court is requested to decide on the basis of the Treaty and rules and principles of general international law, as well as such other treaties as the Court may find applicable,
>
> (a) whether the Republic of Hungary was entitled to suspend and subsequently abandon, in 1989, the works on the Nagymaros Project and on the part of the Gabcíkovo Project for which the Treaty attributed responsibility to the Republic of Hungary;
>
> (b) whether the Czech and Slovak Federal Republic was entitled to proceed, in November 1991, to the 'provisional solution' and to put into operation from October 1992 this system, described in the report of the Working Group of Independent Experts of the Commission of the European Communities, the Republic of Hungary and the Czech and Slovak Federal Republic dated 23 November 1992 (damming up of the Danube at river kilometre 1851.7 on Czechoslovak territory and resulting consequences on water and navigation course);
>
> (c) what are the legal effects of the notification, on 19 May 1992, of the termination of the Treaty by the Republic of Hungary.
>
> (2) The Court is also requested to determine the legal consequences, including the rights and obligations for the Parties, arising from its Judgment on the questions in paragraph (1) of this article."

139. Having ascertained the views of the Parties, the Court decided, by an Order of 14 July 1993 (I.C.J. Reports 1993), that, as provided in article 3, paragraph 2, of the Special Agreement and Article 46, paragraph 1, of the Rules of Court, each Party should file a Memorial and a Counter-Memorial, within the same time-limit, and fixed 2 May 1994 and 5 December 1994 as the time-limits for the filing of the Memorial and Counter-Memorial, respectively.

B. Contentious case before a Chamber

Land, Island and Maritime Frontier Dispute (El Salvador/Honduras: Nicaragua intervening)

140. On 11 December 1986, El Salvador and Honduras jointly notified to the Court a Special Agreement concluded between them on 24 May 1986, whereby a dispute referred to as the land, island and maritime frontier dispute would be submitted for decision to a chamber which the Parties would request the Court to form under Article 26, paragraph 2, of the Statute, to consist of three Members of the Court and two judges ad hoc chosen by each Party.

141. By an Order of 8 May 1987 (I.C.J. Reports 1987, p. 10), the Court, after having received such a request, constituted a Chamber with the following composition: Judges Shigeru Oda, José Sette-Camara and Sir Robert Jennings; Judges ad hoc Nicolas Valticos and Michel Virally, chosen respectively by El Salvador and Honduras. The Chamber elected Judge José Sette-Camara to be its President.

142. In an Order of 13 December 1989 (I.C.J. Reports 1989, p. 162), adopted unanimously, the Court took note of the death of Judge ad hoc Virally, of the nomination on 9 February 1989 by Honduras of Mr. Santiago Torres Bernárdez to replace him, and of a number of communications from the Parties, noted that it appeared that El Salvador had no objection to the choice of Mr. Torres Bernárdez, and that no objection appeared to the Court itself, and declared the Chamber to be composed as follows: Judges José Sette-Camara (President of the Chamber), Shigeru Oda and Sir Robert Jennings; and Judges ad hoc Nicolas Valticos and Santiago Torres Bernárdez. Judge Shahabuddeen appended a separate opinion to the Order (ibid., pp. 165-172).

143. The written proceedings in the case have taken the following course: each Party filed a Memorial within the time-limit of 1 June 1988 which had been fixed therefor by the Court after ascertainment of the Parties' views. By virtue of their Special Agreement, the Parties requested that the written proceedings also consist of Counter-Memorials and Replies, and the Chamber authorized the filing of such pleadings and fixed time-limits. At the successive requests of the Parties, the President of the Chamber, by Orders made on 12 January 1989 and 13 December 1989 (ibid., pp. 3 and 129), extended those time-limits to 10 February 1989 for the Counter-Memorials and 12 January 1990 for the Replies. Each Party's Counter-Memorial and Reply were filed within the prescribed time-limits.

144. On 17 November 1989, the Republic of Nicaragua addressed to the Court and Application under Article 62 of the Statute for permission to intervene in the case. Nicaragua stated that it had no intention of intervening in respect of the dispute concerning the land boundary between El Salvador and Honduras, its object being:

> "First, generally to protect the legal rights of the Republic of Nicaragua in the Gulf of Fonseca and the adjacent maritime areas by all legal means available.
>
> Secondly, to intervene in the proceedings in order to inform the Court of the nature of the legal rights of Nicaragua which are in issue in the dispute. This form of intervention would have the conservative purpose of seeking to ensure that the determinations of the Chamber did not trench upon the legal rights and interests of the Republic of Nicaragua, and Nicaragua intends to subject itself to the binding effect of the decision to be given."

Nicaragua further expressed the view that its request for permission to intervene was a matter exclusively within the procedural mandate of the full Court.

145. By an Order of 28 February 1990 (I.C.J. Reports 1990, p. 3), adopted by 12 votes to 3, the Court, having considered the observations submitted by the Parties on that last point and the Applicant's comments thereon, concluded that it was sufficiently informed of the views of the States concerned, without there being any need for oral proceedings, and found that it was for the Chamber formed to deal with the case to decide whether the Application for permission to intervene should be granted. Judge Oda appended a declaration (ibid., pp. 7-8), and Judges Elias, Tarassov and Shahabuddeen dissenting opinions (ibid., pp. 9-10, 11-17 and 18-62) to the Order.

146. Between 5 and 8 June 1990, the Chamber, at five public sittings, heard oral arguments on the Nicaraguan Application for permission to intervene, presented on behalf of Nicaragua, El Salvador and Honduras.

147. At a public sitting held on 13 September 1990, the Chamber delivered its Judgment on the Application by Nicaragua for permission to intervene (ibid., p. 92) in which it found, unanimously, that the Republic of Nicaragua had shown that it had an interest of a legal nature which might be affected by part of the Judgment of the Chamber on the merits in the present case, namely its decision on the legal regime of the waters of the Gulf of Fonseca, but had not shown such an interest which might be affected by any decision which the Chamber might be required to make concerning the delimitation of those waters, or any decision as to the legal situation of the maritime spaces outside the Gulf, or any decision as to the legal situation of the islands in the Gulf. Accordingly, the Chamber decided that the Republic of Nicaragua was permitted to intervene in the case, pursuant to Article 62 of the Statute, to the extent, in the manner and for the purposes set out in the Judgment, but not further or otherwise. Judge Oda appended a separate opinion to the Judgment (ibid., pp. 138-144).

148. By an Order of 14 September 1990 (ibid., p. 146), the President of the Chamber, having ascertained the views of the Parties and of the intervening State, fixed 14 December 1990 as the time-limit for the submission by Nicaragua of a written statement, and 14 March 1991 as the time-limit within which the Parties might, if they so desired, furnish their written observations on the written statement of Nicaragua. Both the written statement by Nicaragua and the written observations thereon by the two Parties were filed within the prescribed time-limits.

149. At 50 public sittings, held between 15 April and 14 June 1991, the Chamber heard oral arguments by the two Parties, as well as Nicaragua's observations with respect to the subject-matter of its intervention and the two Parties' observations thereon. It also heard a witness, presented by El Salvador.

150. At a public sitting held on 11 September 1992, the Chamber delivered its Judgment (I.C.J. Reports 1992, p. 351), the operative part of which reads as follows:

> "425. For the reasons set out in the present Judgment, in particular paragraphs 68 to 103 thereof,
>
> THE CHAMBER
>
> Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the first sector of their common frontier not described in Article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the international tripoint known as El Trifinio on the summit of the Cerro Montecristo (point A on Map No. I annexed); coordinates: 14°25'10" N, 89°21'20" W), the boundary runs in a generally easterly direction along the watershed between the rivers Frío or Sesecapa and Del Rosario as far as the junction of this watershed with the watershed of the basin of the quebrada de Pomola (point B on Map No. I annexed; coordinates: 14°25'05" N, 89°20'41" W); thereafter in a north-easterly direction along the watershed of the basin of the quebrada de Pomola until the junction of this watershed with the watershed between the quebrada de Cipresales and the quebrada del Cedrón, Peña Dorada and Pomolo proper (point C on Map No. I annexed; coordinates: 14°25'09" N, 89°20'30" W); from that point, along the last-named watershed as far as the intersection of the centre-lines of the quebradas of Cipresales and Pomola (point D on Map No. I annexed; coordinates: 14°24'42" N, 89°18'19" W); thereafter, downstream along the centre-line of the quebrada de Pomola, until the point on that centre-line which is closest to the boundary marker of Pomola at El Talquezalar; and from that point in a straight line as far as that marker (point E on Map No. I annexed; coordinates: 14°24'51" N, 89°17'54" W); from there in a straight line in a south-easterly direction to the boundary marker of the Cerro Piedra Menuda (point F on Map No. I annexed); coordinates: 14°24'02" N, 89°16'40" W), and thence in a straight line to the boundary marker of the Cerro Zapotal (point G on Map No. I annexed; coordinates: 14°23'26" N, 89°14'43" W); for the purposes of illustration, the line is indicated on Map No. I annexed.

426. For the reasons set out in the present Judgment, in particular paragraphs 104 to 127 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the second sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the Peña de Cayaguanca (point A on Map No. II annexed; coordinates: 14°21'54" N, 89°10'11" W), the boundary runs in a straight line somewhat south of east to the Loma de Los Encinos (point B on Map No. II) annexed; coordinates: 14°21'08" N, 89°08'54" W), and from there in a straight line to the hill known as El Burro or Piedra Rajada (point C on Map No. II annexed; coordinates: 14°22'46" N, 89°07'32" W); from there the boundary runs in a straight line to the head of the quebrada Copantillo, and follows the middle of the quebrada Copantillo downstream to its confluence with the river Sumpul (point D on Map No. II annexed); coordinates: 14°24'12" N, 89°06'07" W), and then follows the middle of the river Sumpul downstream to its confluence with the quebrada Chiquita or Oscura (point E on Map No. II annexed; coordinates: 14°20'25" N, 89°04'57" W); for the purposes of illustration, the line is indicated on Map No. II annexed.

427. For the reasons set out in the present Judgment, in particular paragraphs 128 to 185 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the third sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the Pacacio boundary marker (point A on Map No. III annexed; coordinates: 14°06'28" N, 88°49'18" W) along the río Pacacio upstream to a point (point B on Map No. III annexed; coordinates: 14°06'38 N, 88°48'47" W), west of the Cerro Tecolate or Los Tecolates; from there up the quebrada to the crest of the Cerro Tecolate or Los Tecolates (point C on Map No. III annexed; coordinates: 14°06'33" N, 88°48'18" W), and along the watershed of this hill as far as a ridge approximately 1 kilometre to the north-east (point D on Map No. III annexed; coordinates: 14°06'48" N, 88°47'52" W); from there in an easterly direction to the neighbouring hill above the source of the Torrente La Puerta (point E on Map No. III annexed); coordinates: 14°06'48" N, 88°47'31" W) and down that stream to where it meets the river Gualsinga (point F on Map No. III annexed; coordinates: 14°06'19" N, 88°47'01" W); from there the boundary runs along the middle of the river Gualsinga downstream to its confluence with the river Sazalapa (point G on Map No. III annexed; coordinates: 14°06'12" N, 88°46'58" W), and thence upstream along the middle of the river Sazalapa to the confluence of the quebrada Llano Negro with that river (point H on Map No. III annexed; coordinates: 14°07'11" N, 88°44'21" W); from there south-eastwards to the top of the hill (point I on Map No. III annexed; coordinates 14°07'01" N, 88°44'07" W), and thence south-eastwards to the crest of the hill marked on the map as a spot height of 1,017 metres (point J on Map No. III annexed; coordinates: 14°06'45" N, 88°43'45" W); from there the boundary, inclining still more to the south, runs through the triangulation point known as La Cañada (point K on Map No. III annexed; coordinates: 14°06'00" N, 88°43'52" W) to the ridge joining the hills indicated on the map as Cerro El Caracol and Cerro El Sapo (through point L on Map No. III annexed; coordinates: 14°05'23" N, 88°43'47" W) and from there to the feature marked on the map as the Portillo El Chupa Miel (point M on Map No. III annexed; coordinates: 14°04'35" N, 88°44'10" W); from there, following the ridge to the Cerro El Cajete (point N on Map No. III annexed; coordinates: 14°03'55" N, 88°44'20" W), and thence to the point where the present-day road from Arcatao to Nombre de Jesús passes between the Cerro El Ocotillo and the Cerro Lagunetas (point O on Map No. III annexed; coordinates: 14°03'18" N, 88°44'16" W); from there south-eastwards to the crest of a hill marked on the map as a spot height of 848 metres (point P on Map No. III annexed; coordinates: 14°02'58" N, 88°43'56" W); from there slightly south of eastwards to a quebrada and down the bed of the quebrada to its junction with the Gualcuquín river (point Q on Map No. III annexed; coordinates: 14°02'42" N, 88°42'34" W); the boundary then follows the middle of the Gaulcuquín river downstream to the Poza del Cajon (point R on Map No. III annexed; coordinates: 14°01'28" N, 88°41'10" W); for purposes of illustration, this line is shown on Map No. III annexed.

428. For the reasons set out in the present Judgment, in particular paragraphs 186 to 267 thereof,

THE CHAMBER,

By four votes to one,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fourth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the source of the Orilla stream (point A on Map No. IV annexed; coordinates: 13°53'46" N, 88°20'36" W) the boundary runs through the pass of El Jobo to the source of the Cueva Hedionda stream (point B on Map No. IV; coordinates: 13°53'39" N, 88°20'20" W), and thence down the middle of that stream to its confluence with the river Las Cañas (point C on Map No. IV annexed; coordinates: 13°53'19" N, 88°19'00" W), and thence following the middle of the river upstream as far as a point (point D on Map No. IV annexed; coordinates: 13°56'14" N, 88°15'33" W) near the settlement of Las Piletas; from there eastwards over a col indicated as point E on Map No. IV annexed; (coordinates: 13°56'19" N, 88°14'12" W), to a hill indicated as point F on Map No. IV annexed (coordinates: 13°56'11" N, 88°13'40" W), and then north-eastwards to a point on the river Negro or Pichigual (marked G on Map No. IV annexed; coordinates 13°57'12" N, 88°13'11" W); downstream along the middle of the river Negro or Pichigual to its confluence with the river Negro-Quiagara (point H on Map No. IV; coordinates: 13°59'37" N, 88°14'18" W); then upstream along the middle of the river Negro-Quiagara as far as the Las Pilas boundary marker (point I on Map No. IV; coordinates: 14°00'02" N, 88°06'29" W), and from there in a straight line to the Malpaso de Similatón (point J on Map No. IV; coordinates: 13°59'28" N, 88°04'22" W); for the purposes of illustration, the line is indicated on Map No. IV annexed.

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judge ad hoc Torrese Bernárdez;

AGAINST: Judge ad hoc Valticos.

429. For the reasons set out in the present Judgment, in particular paragraphs 268 to 305 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the fifth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the confluence with the river Torola of the stream identified in the General Treaty of Peace as the quebrada de Mansupucagua (point A on Map No. V annexed; coordinates: 13°53'59" N, 87°54'30" W) the boundary runs upstream along the middle of the river Torola as far as its confluence with a stream known as the quebrada del Arenal or quebrada de Aceituno (point B on Map No. V annexed; coordinates: 13°53'50" N, 87°50'40" W); thence up the course of that stream as far as a point at or near its source (point C on Map No. V annexed; coordinates: 13°54'30" N, 87°50'20" W), and thence in a straight line somewhat north of east to a hill some 1,100 metres high (point D on Map No. V annexed; coordinates: 13°55'03" N, 87°49'50" W); thence in a straight line to a hill near the river Unire (point E on Map No. V annexed; coordinates: 13°55'16" N, 87°48'20" W), and thence to the nearest point on the river Unire; downstream along the middle of that river to the point known as the Paso de Unire (point F on Map No. V annexed;

coordinates: 13°52'07" N, 87°46'01" W); for the purposes of illustration, the line is indicated on Map No. V annexed.

430. For the reasons set out in the present Judgment, in particular paragraphs 306 to 322 thereof,

THE CHAMBER,

Unanimously,

Decides that the boundary line between the Republic of El Salvador and the Republic of Honduras in the sixth sector of their common frontier not described in article 16 of the General Treaty of Peace signed by the Parties on 30 October 1980, is as follows:

From the point on the river Goascorán known as Los Amates (point A on Map No. VI annexed; coordinates: 13°26'28" N, 87°43'25" W), the boundary follows the course of the river downstream, in the middle of the bed, to the point where it emerges in the waters of the Bahia La Unión, Gulf of Fonseca, passing to the north-west of the Islas Ramaditas, the coordinates of the endpoint in the bay being 13°24'26" N, 87°49'05" W; for the purposes of illustration, the line is indicated on Map No. VI annexed.

431. For the reasons set out in the present Judgment, in particular paragraphs 323 to 368 thereof,

THE CHAMBER,

1. By four votes to one,

Decides that the Parties, by requesting the Chamber, in article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the islands ...", have conferred upon the Chamber jurisdiction to determine, as between the Parties, the legal situation of all the islands of the Gulf of Fonseca; but that such jurisdiction should only be exercised in respect of those islands which have been shown to be the subject of a dispute;

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judge ad hoc Valticos;

AGAINST: Judge ad hoc Torres Bernárdez.

2. Decides that the islands shown to be in dispute between the Parties are:

(i) by four votes to one, El Tigre;

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judge ad hoc Valticos;

AGAINST: Judge ad hoc Torres Bernárdez;

(ii) unanimously, Meanguera and Meanguerita.

3. Unanimously,

Decides that the island of El Tigre is part of the sovereign territory of the Republic of Honduras.

4. Unanimously,

Decides that the island of Meanguera is part of the sovereign territory of the Republic of El Salvador.

5. By four votes to one,

Decides that the island of Meanguerita is part of the sovereign territory of the Republic of El Salvador;

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judge ad hoc Valticos;

AGAINST: Judge ad hoc Torres Bernárdez;

432. For the reasons set out in the present Judgement, in particular paragraphs 369 to 420 thereof,

THE CHAMBER,

1. By four votes to one,

Decides that the legal situation of the waters of the Gulf of Fonseca is as follows: Gulf of Fonseca is an historic bay the waters whereof, having previously to 1821 been under the single control of Spain, and from 1821 to 1839 of the Federal Republic of Central America, were thereafter succeeded to and held in sovereignty by the Republic of El Salvador, the Republic of Honduras, and the Republic of Nicaragua, jointly, and continue to be so held, as defined in the present Judgment, but excluding a belt, as at present established, extending 3 miles (1 marine league) from the littoral of each of the three States, such belt being under the exclusive sovereignty of the coastal State, and subject to the delimitation between Honduras and Nicaragua effected in June 1900, and to the existing rights of innocent passage through the 3-mile belt and the waters held in sovereignty jointly; the waters at the central portion of the closing line of the Gulf, that is to say, between a point on that line 3 miles (1 marine league) from Punta Amapala and a point on that line 3 miles (1 marine league) from Punta Cosigüina, are subject to the joint entitlement of all three States of the Gulf unless and until a delimitation of the relevant maritime area be effected;

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Judge ad hoc Valticos; Judge ad hoc Torres Bernárdez;

AGAINST: Vice-President Oda.

2. By four votes to one,

Decides that the Parties, by requesting the Chamber, in article 2, paragraph 2, of the Special Agreement of 24 May 1986, "to determine the legal situation of the ... maritime spaces", have not conferred upon the Chamber jurisdiction to effect any delimitation of those maritime spaces, whether within or outside the Gulf;

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Vice-President Oda; Judge ad hoc Valticos;

AGAINST: Judge ad hoc Torres Bernárdez.

3. By four votes to one,

Decides that the legal situation of the waters outside the Gulf is that, the Gulf of Fonseca being an historic bay with three coastal States, the closing line of the Gulf constitutes the baseline of the territorial sea; the territorial sea, continental shelf and exclusive economic zone of El Salvador and those of Nicaragua off the coasts of those two States are also to be measured outwards from a section of the closing line extending 3 miles (1 marine league) along that line from Punta Amapala (in El Salvador) and 3 miles (1 marine league) from Punta Cosigüina (in Nicaragua) respectively; but entitlement to territorial sea, continental shelf and exclusive economic zone seaward of the central portion of the closing line appertains to the three States of the Gulf, El Salvador, Honduras and Nicaragua; and that any delimitation of the relevant maritime areas is to be effected by agreement on the basis of international law.

IN FAVOUR: Judge Sette-Camara, President of the Chamber; President Sir Robert Jennings; Judge ad hoc Valticos; Judge ad hoc Torres Bernárdez.

AGAINST: Vice-President Oda."

151. Vice-President Oda (I.C.J. Reports 1992, p. 619) appended a declaration to the Judgment; Judges ad hoc Valticos (ibid., p. 621) and Torres Bernárdez (ibid., p. 629) appended separate opinions; Vice-President Oda (ibid., p. 732) appended a dissenting opinion.

IV. THE ROLE OF THE COURT

152. At the 43rd meeting of the forty-seventh session of the General Assembly, held on 21 October 1992, at which the Assembly took note of the preceding report of the Court, the President of the Court, Sir Robert Yewdall Jennings, addressed the General Assembly on the role and functioning of the Court (A/47/PV.43).

V. LECTURES ON THE WORK OF THE COURT

153. Many talks and lectures on the Court, both at the seat of the Court and elsewhere, were given by the President, Members of the Court, the Registrar and officials of the Court in order to improve public understanding of the judicial settlement of international disputes, the jurisdiction of the Court and its function in advisory cases. During the period under review, the Court received 114 groups, including scholars and academics, judges and representatives of judicial authorities, lawyers and legal professionals as well as others, amounting to some 3,300 persons in all.

VI. COMMITTEES OF THE COURT

154. The committees constituted by the Court to facilitate the performance of its administrative tasks, which met several times during the period under review, were composed as follows from 7 February 1992:

(a) The Budgetary and Administrative Committee: the President, the Vice-President and Judges Schwebel, Bedjaoui, Tarassov, Guillaume and Shahabuddeen;

(b) The Committee on Relations: Judges Bedjaoui, Ni and Aguilar Mawdsley;

(c) The Library Committee: Judges Ago, Weeramantry and Ranjeva.

155. The Rules Committee, constituted by the Court in 1979 as a standing body, is composed of Judges Ago, Bedjaoui, Ni, Evensen and Tarassov.

VII. PUBLICATIONS AND DOCUMENTS OF THE COURT

156. The publications of the Court are distributed to the Governments of all States entitled to appear before the Court, and to the major law libraries of the world. The sale of those publications is organized by the Sales Sections of the United Nations Secretariat, which are in touch with specialized booksellers and distributors throughout the world. A catalogue (the latest edition, of which is 1992) is, with its annual addenda, distributed free of charge.

157. The publications of the Court include at present three annual series: Reports of Judgments, Advisory Opinions and Orders (also published in separate fascicles), a Bibliography of works and documents relating to the Court, and a Yearbook (in the French version: Annuaire). The most recent publication in the first series is I.C.J. Reports 1990. Bibliography No. 45 (1991) has been published during the period covered by this report.

158. Even before the termination of a case, the Court may, pursuant to Article 53 of the Rules of Court, and after ascertaining the views of the Parties, make the pleadings and documents available on request to the Government of any State entitled to appear before the Court. The Court may also, having ascertained the views of the Parties, make them accessible to the public on or after the opening of the oral proceedings. The documentation of each case is published by the Court after the end of the proceedings, under the title Pleadings, Oral Arguments, Documents. In that series, (volumes III and V (maps) in the case concerning the Continental Shelf (Libyan Arab Jamahiriya/Malta) and volumes I and II in the case concerning Elettronica Sicula S.p.A. (ELSI) (United States of America v. Italy) were published during the period under review.

159. In the series Acts and Documents concerning the Organization of the Court, the Court also publishes the instruments governing its functioning and practice. A new but little-changed edition (No. 5) was published in 1989 to replace No. 4 in the series, which was issued after the revision of the Rules adopted by the Court on 14 April 1978 and is now out of print.

160. An offprint of the Rules of Court is available in French and English. Unofficial Arabic, Chinese, German, Russian and Spanish translations of the Rules are also available.

161. The Court distributes press communiqués, background notes and a handbook in order to keep lawyers, university teachers and students, government officials, the press and the general public informed about its work, functions and jurisdiction. The third edition of the handbook appeared at the end of 1986, on the occasion of the Court's 40th anniversary, in English and French. Arabic, Chinese, Russian and Spanish translations of that edition were published in 1990. A German version of the first edition is still available.

162. More comprehensive information on the work of the Court during the period under review will be found in I.C.J. Reports 1992-1993, to be issued in due course.

Sir Robert JENNINGS
President of the International
Court of Justice

The Hague, 9 August 1993

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